

# Senate Bill 387

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises Uniform Principal and Income Act.

Clarifies that individual retirement account or similar retirement plan held by trust established for surviving spouse's benefit qualifies for federal estate tax marital deduction.

Provides formula for calculating amounts that trust must distribute to beneficiaries, and amounts that trust may use to pay taxes, when trust is required to pay taxes on entity in which trust holds interest.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to Uniform Principal and Income Act; creating new provisions; amending ORS 129.355 and  
3 129.420; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 129.355 is amended to read:

6 129.355. [(1) *In this section, "payment" means a payment that a trustee may receive over a fixed*  
7 *number of years or during the life of one or more individuals because of services rendered or property*  
8 *transferred to the payer in exchange for future payments. The term includes a payment made in money*  
9 *or property from the payer's general assets or from a separate fund created by the payer, including a*  
10 *private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-*  
11 *bonus or stock-ownership plan.*]

12 [(2) *Except as provided in subsection (5) of this section, to the extent that a payment is character-*  
13 *ized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall al-*  
14 *locate it to income. The trustee shall allocate to principal the balance of the payment and any other*  
15 *payment received in the same accounting period that is not characterized as interest, a dividend or an*  
16 *equivalent payment.*]

17 [(3) *Except as provided in subsection (5) of this section, if no part of a payment is characterized*  
18 *as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made,*  
19 *a trustee shall allocate to income 10 percent of the part that is required to be made during the ac-*  
20 *counting period and the balance to principal. If no part of a payment is required to be made or the*  
21 *payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the en-*  
22 *tire payment to principal. For purposes of this subsection, a payment is not "required to be made" to*  
23 *the extent that it is made because the trustee exercises a right of withdrawal.*]

24 [(4) *If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a*  
25 *payment to income than provided for by this section, the trustee shall allocate to income the additional*  
26 *amount necessary to obtain the marital deduction.*]

27 [(5)(a) *An increase in value of the following obligations over the value of the obligations at the time*

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 of acquisition by the trust is distributable as income:]

2 [(A) A zero coupon security.]

3 [(B) A deferred annuity contract surrendered wholly or partially before annuitization.]

4 [(C) A life insurance contract surrendered wholly or partially before the death of the insured.]

5 [(D) Any other obligation for the payment of money that is payable at a future time in accordance  
6 with a fixed, variable or discretionary schedule of appreciation in excess of the price at which it was  
7 issued.]

8 [(b) For purposes of this subsection, the increase in value of an obligation is available for distrib-  
9 ution only when the trustee receives cash on account of the obligation. If the obligation is surrendered  
10 or partially liquidated, the cash available must be attributed first to the increase. The increase is dis-  
11 tributable to the income beneficiary who is the beneficiary at the time the cash is received.]

12 [(6) This section does not apply to payments to which ORS 129.360 applies.]

13 **(1) In this section, the following terms have the following meanings:**

14 **(a) "Payment" means a payment that a trustee may receive over a fixed number of years  
15 or during the life of one or more individuals because of services rendered or property  
16 transferred to the payer in exchange for future payments. The term includes a payment  
17 made in money or property from the payer's general assets or from a separate fund created  
18 by the payer. For purposes of subsections (4), (5), (6) and (7) of this section, the term also  
19 includes any payment from any separate fund, regardless of the reason for the payment.**

20 **(b) "Separate fund" includes a private or commercial annuity, an individual retirement  
21 account and a pension, profit-sharing, stock-bonus or stock-ownership plan.**

22 **(2) Except as provided in subsection (8) of this section, to the extent that a payment is  
23 characterized as interest, a dividend or a payment made in lieu of interest or a dividend, a  
24 trustee shall allocate that portion of the payment to income. The trustee shall allocate to  
25 principal the balance of the payment and any other payment received in the same accounting  
26 period that is not characterized as interest, a dividend or an equivalent payment.**

27 **(3) Except as provided in subsection (8) of this section, if no part of a payment is char-  
28 acterized as interest, a dividend or an equivalent payment, and all or part of the payment is  
29 required to be made, a trustee shall allocate to income 10 percent of the part that is required  
30 to be made during the accounting period and the balance to principal. If no part of a payment  
31 is required to be made or the payment received is the entire amount to which the trustee  
32 is entitled, the trustee shall allocate the entire payment to principal. For purposes of this  
33 subsection, a payment is not required to be made to the extent that it is made because the  
34 trustee exercises a right of withdrawal.**

35 **(4) Except as provided in subsection (5) of this section, subsections (6) and (7) of this  
36 section apply, and subsections (2) and (3) of this section do not apply, in determining the al-  
37 location of a payment made from a separate fund to either of the following:**

38 **(a) A trust for which an election has been made to qualify for a marital deduction under  
39 26 U.S.C. 2056(b)(7), as in effect on the effective date of this 2011 Act; or**

40 **(b) A trust that qualifies for the marital deduction under 26 U.S.C. 2056(b)(5), as in effect  
41 on the effective date of this 2011 Act.**

42 **(5) Subsections (4), (6) and (7) of this section do not apply in determining the allocation  
43 of a series of payments made from a separate fund if and to the extent that the series of  
44 payments would, without the application of subsection (4) of this section, qualify for the  
45 marital deduction under 26 U.S.C. 2056(b)(7)(C), as in effect on the effective date of this 2011**

1 Act.

2 (6) Except as provided in subsection (7) of this section, a trustee shall determine the  
3 internal income of each separate fund for the accounting period as if the separate fund were  
4 a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall de-  
5 mand that the person administering the separate fund distribute the internal income to the  
6 trust. The trustee shall allocate a payment from the separate fund to income to the extent  
7 of the internal income of the separate fund and distribute that amount to the surviving  
8 spouse. The trustee shall allocate the balance of the payment to principal. Upon request of  
9 the surviving spouse, the trustee shall allocate principal to income to the extent the internal  
10 income of the separate fund exceeds payments made from the separate fund to the trust  
11 during the accounting period.

12 (7) If a trustee cannot determine the internal income of a separate fund but can deter-  
13 mine the value of the separate fund, the internal income of the separate fund is deemed to  
14 equal four percent of the fund's value, according to the most recent statement of value  
15 preceding the beginning of the accounting period. If the trustee can determine neither the  
16 internal income of the separate fund nor the fund's value, the internal income of the fund  
17 is deemed to equal the product of the interest rate and the present value of the expected  
18 future payments, as determined under 26 U.S.C. 7520, as in effect on the effective date of this  
19 2011 Act, for the month preceding the accounting period for which the computation is made.

20 (8)(a) An increase in value of the following obligations over the value of the obligations  
21 at the time of acquisition by the trust is distributable as income:

22 (A) A zero coupon security.

23 (B) A deferred annuity contract surrendered wholly or partially before annuitization.

24 (C) A life insurance contract surrendered wholly or partially before the death of the in-  
25 sured.

26 (D) Any other obligation for the payment of money that is payable at a future time in  
27 accordance with a fixed, variable or discretionary schedule of appreciation in excess of the  
28 price at which it was issued.

29 (b) For purposes of this subsection, the increase in value of an obligation is available for  
30 distribution only when the trustee receives cash on account of the obligation. If the obli-  
31 gation is surrendered or partially liquidated, the cash available must be attributed first to  
32 the increase. The increase is distributable to the income beneficiary who is the beneficiary  
33 at the time the cash is received.

34 (9) This section does not apply to a payment to which ORS 129.360 applies.

35 **SECTION 2.** (1) Except as provided in subsection (2) of this section, the amendments to  
36 ORS 129.355 by section 1 of this 2011 Act apply to the determination of the allocation of  
37 payments from separate funds made on or after January 1, 2011.

38 (2) The amendments to ORS 129.355 by section 1 of this 2011 Act apply to the determi-  
39 nation of the allocation of payments from separate funds made on or after the death of the  
40 grantor if:

41 (a) The trust established by the grantor is not funded on or before January 1, 2011; or

42 (b) The trust established by the grantor is first funded in calendar year 2011.

43 **SECTION 3.** ORS 129.420 is amended to read:

44 129.420. (1) A tax required to be paid by a trustee based on receipts allocated to income must  
45 be paid from income.

1 (2) A tax required to be paid by a trustee based on receipts allocated to principal must be paid  
2 from principal, even if the tax is called an income tax by the taxing authority.

3 (3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must  
4 be paid [*proportionately*]:

5 (a) From income to the extent that receipts from the entity are allocated **only** to income; [*and*]

6 (b) From principal to the extent that[:]

7 [(A)] receipts from the entity are allocated **only** to principal; [*and*]

8 [(B) *The trust's share of the entity's taxable income exceeds the total receipts described in para-*  
9 *graph (a) of this subsection and subparagraph (A) of this paragraph*]

10 (c) **Proportionately from principal and income to the extent that receipts from the entity**  
11 **are allocated to both income and principal; and**

12 (d) **From principal to the extent that the tax exceeds the total receipts from the entity.**

13 (4) [*For purposes of this section, receipts allocated to principal or income must be reduced by the*  
14 *amount distributed to a beneficiary from principal or income for which the trust receives a deduction*  
15 *in calculating the tax.*] **After applying subsections (1) to (3) of this section, the trustee shall**  
16 **adjust income or principal receipts to the extent that the trust's taxes are reduced because**  
17 **the trust receives a deduction for payments made to a beneficiary.**

18 **SECTION 4. The amendments to ORS 129.420 by section 3 of this 2011 Act apply to taxes**  
19 **payable by a trustee on or after January 1, 2011.**

20 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**  
21 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
22 **on its passage.**

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